

REMARKS

Claims now pending in this case are 2-8 and 10. Claim 10 is the only independent claim.

Previously presented claim 9 was argued by the Examiner as relating to a different invention than the invention impliedly elected in the prosecution of originally presented claims 1-8 for the earlier appealed case. Applicants disagree with the Examiner's conclusion that previously presented claim 9 related to a different invention; however, in order to advance the prosecution, Applicants have simply cancelled claim 9 rendering the objection moot.

Claim 10 is of the style and format previously presented for the definitional claims of the invention and should therefore not present the same objection.

In response to the Appeal Brief, the Examiner entered a new rejection of obviousness over Meisner taken with Joullie et al. and the Chemical Abstracts Registry file print. The only independent claim is 10. Meisner, Joullie et al. and the Chemical Abstracts Registry file print do not render obvious claims 2-8 and 10. Specifically the transition phrase "consisting essentially of" in conjunction with administration of a therapeutically effective amount of the S-alkylthiol as an antagonist of S-nitrosothiols distinguishes the prior art. Meisner is directed towards wound healing and Joullie et al. is directed towards a laundry list of complaints (col. 12, lines 1-15), none of which relate for example to alleviation of hypotension. It is noted that where a reference does not appreciate the existence of a problem resolved by the claimed invention, this itself is evidence of nonobviousness. Meisner teaches that "wound healing process can be favorably affected by the administration of composition comprising of a mild anti-inflammatory agent and substances which in combination have been found to accelerate fibrous tissue growth" (col. 2, lines 49-55). Applicants on the hand embodies a methodology and a therapeutic method that specifically counteracts the hypotension caused by the overproduction of nitric oxide and

nitrosothiols such as present in condition such as septic shock (Specification, page 2, line 17-24). Recognition of the source of this problem is what is not obvious and Meisner fails to contemplated or disclose such a problem. Moreover, the Meisner compositions are excluded by the use of the transition phrase "consisting essentially of" and the use of the that phrase precludes the addition of ingredients that would destroy the effects of the S-alkylthiols as an antagonist to S-nitrosothiols as defined in Appellant's claim 10. See *Atlas Powder Co. v. E. I. du Pont de Nemours & Co.*, 750 F.2d 1569, 1574 (Fed. Cir. 1984). This too is consistent with the MPEP § 2111.03 definition of, "consisting essentially of" Meisner has a litany of other ingredients, such as calcium, ascorbic acid, etc. that distinguish it.

Applicants have made a sincere effort to place this case in condition for allowance. This prosecution has gone on too long, including forcing Applicants to the expense of an appeal only to then have the Examiner not answer the appeal but return to normal prosecution. It is time to get the issue crystallized, and either get the case allowed or properly get it to appeal.

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



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